

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT
OF THE TTAB

Mailed: April 30, 2003

Paper No. 13

cs1

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Liberty Hardware Mfg. Corp.

Serial No. 76/175,703

Edgar A. Zarins of Masco Corporation for Liberty Hardware Mfg. Corp.

Edward Nelson, Trademark Examining Attorney, Law Office 114
(K. Margaret Le, Managing Attorney).

Before Simms, Quinn and Walters, Administrative Trademark Judges.

Opinion by Simms, Administrative Trademark Judge:

Liberty Hardware Mfg. Corp. (applicant), a Florida corporation, has appealed from the final refusal of the Trademark Examining Attorney to register the mark MANSFIELD for "bathroom accessories, namely, towel bars, towel rings, toilet tissue holders, soap dishes, tumbler holders and toothbrush holders."¹ The Examining Attorney has refused

¹ Application Serial No. 76/175,703, filed December 6, 2000, based upon applicant's allegation of a bona fide intention to use the mark in commerce.

registration under Section 2(e)(4) of the Act, 15 USC §1052(e)(4), on the basis that applicant's mark is primarily merely a surname. Applicant and the Examining Attorney have submitted briefs but no oral hearing was requested.

We affirm.

The Examining Attorney argues that the primary significance of the term MANSFIELD to the purchasing public is that of a surname. In support of his argument, the Examining Attorney has submitted a printout of the first 100 surnames, out of 8,113 U.S. residential listings, from the *infoUSA* database (formerly PhoneDisc). The Examining Attorney also contends that this name has the "look and sound" of a surname.

Applicant, on the other hand, contends that the listings in a directory do not address the question of the primary significance of this term to the purchasing public. Applicant argues that consumers will not consult a phone listing while shopping for applicant's goods, and that the Examining Attorney's evidence establishes only that MANSFIELD could function as a surname. It is applicant's position that its mark is merely an arbitrary identifier of a product and that the public will view applicant's mark as

a trademark. Applicant also argues that the term MANSFIELD does not have the "feel" of a surname.

Whether a term is primarily merely a surname depends on the primary significance of the term to the purchasing public. *In re Harris-Intertype Corp.*, 518 F.2d 629, 186 USPQ 238 (CCPA 1975). The Examining Attorney bears the burden of establishing a *prima facie* case in support of the conclusion that the primary significance of the term to the purchasing public would be that of a surname. If a *prima facie* case is presented, then the burden of rebutting that showing shifts to the applicant. *In re Etablissements Darty et Fils*, 759 F.2d 15, 225 USPQ 652 (Fed. Cir. 1985); *In re Harris-Intertype Corp.*, *supra*; *In re Pyro-Spectaculars, Inc.*, 62 USPQ 355 (TTAB 2002); and *In re Rebo High Definition Studio Inc.*, 15 USPQ2d 1314 (TTAB 1990).

Factors to be considered in determining whether a term is primarily a surname include: (i) the rarity of use of the term as a surname; (ii) whether anyone connected with applicant has the surname in question; (iii) whether the term in question has any recognized meaning other than that of a surname; and (iv) whether the term has the "look and sound" of a surname. *In re Benthin Management GmbH*, 37 USPQ2d 1332 (TTAB 1995).

The evidence of record is sufficient to establish a *prima facie* case that the term MANSFIELD has surname significance. Applicant has submitted no evidence that this term has alternative meanings, only its argument that the term would be perceived as applicant's trademark. However, it was incumbent upon applicant to submit evidence of non-surname significance in order to rebut this showing. Because this record establishes that the term MANSFIELD has strong surname significance (over 8,000 listings in the United States), and because there is no evidence that this term has any significance other than that of a surname, we conclude that the primary significance to the public is that of a surname.

Decision: The refusal of registration is affirmed.